



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1241]

Newvista Property Holdings, LLC—Adverse Abandonment of the Ironton Branch—

In Utah County, Utah

[Docket No. FD 36040]¹

Newvista Property Holdings, LLC—Petition For Declaratory Order

By petition filed on March 7, 2016, NewVista Property Holdings, LLC (NewVista), seeks waivers of certain Board regulations and exemptions from certain statutory provisions in connection with an adverse, or third-party, application for abandonment it plans to file under 49 U.S.C. 10903. NewVista's petition concerns approximately 1.87 miles of railroad owned by Union Pacific Railroad Company (UP) known as the Ironton Branch. NewVista states that it owns, or controls, nearly all of the industrial property that abuts the Ironton Branch.

On March 28, 2016, UP filed a reply to NewVista's petition, arguing that the petition should be rejected or denied because the Ironton Branch is excepted track under 49 U.S.C. 10906, and thus falls outside the Board's abandonment authority.

On April 7, 2016, NewVista filed a reply to UP's reply (the Surreply). In its Surreply, NewVista requests: (1) guidance regarding the appropriate procedures to obtain a ruling on whether the Ironton Branch has been removed from the Board's jurisdiction; (2) a declaratory order that the Board "has authority to adversely abandon the Ironton Branch" or that the Ironton Branch is no longer part of the national rail

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

system and that the Board has no jurisdiction over the Ironton Branch. Additionally, “[i]f the Ironton Branch has been taken outside the authority of the STB because an abandonment already has been consummated, [NewVista] requests a declaratory order so stating.”

The history and status of the Ironton Branch is well documented. The Interstate Commerce Commission (ICC) authorized UP’s request to abandon the Ironton Branch in 1977. L.A. & Salt Lake R.R.—Aban.—Portion of the Ironton Branch in Utah Cty., Utah, AB 85 (Sub-No. 3) (ICC served Oct. 6, 1977). Subsequently, UP filed a notice with the ICC on December 30, 1977, clarifying that track between Mileposts 0.64 and 0.71 was “retired and removed,” and that track between Mileposts 0.00 and 0.64, and between Mileposts 0.71 and 1.87, was to be retained and reclassified as yard track. The Board confirmed the status of those portions of the Ironton Branch as yard track in Joseph R. Fox—Petition for Declaratory Order, FD 35161 (STB served May 18, 2009), aff’d Fox v. STB, 379 Fed. Appx. 767 (10th Cir. 2010). In that decision, the Board also confirmed that industrial yard track, while excepted under 49 U.S.C. 10906 from the need to obtain Board authority for construction, abandonment, or operation, is nevertheless subject to the Board’s jurisdiction and is not subject to state or local regulation.

Because yard track is not subject to the Board’s § 10903 abandonment authority, the Board recently explained that yard track is likewise excepted from the Board’s adverse abandonment process. Instead, the proper vehicle for removing the Board’s jurisdiction over yard track is through a declaratory order proceeding. Pinelawn Cemetery—Pet. for Declaratory Order, FD 35468, slip op. at 11 n.31 (STB served Apr. 21, 2015). Because the portion of the Ironton Branch remaining under Board

jurisdiction is yard track, an adverse abandonment is not appropriate here. Therefore, the Board will deny NewVista's petition for waiver and will close the abandonment proceeding.

However, NewVista's Surreply contains a request for a declaratory order in the alternative. The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, a controversy exists as to whether the yard track has been or can be removed from the Board's jurisdiction. The Board will therefore institute a declaratory order proceeding.

It is ordered:

1. NewVista's petition for waiver in Docket No. AB 1241 is denied.
2. Docket No. AB 1241 is closed.
3. A declaratory order proceeding is instituted in Docket No. FD 36040. All parties must comply with the Rules of Practice, including 49 CFR parts 1112 and 1114.
4. NewVista's Opening Statement is due August 23, 2016.
5. Replies are due September 12, 2016.
6. NewVista's rebuttal is due September 22, 2016.
7. Notice of the Board's action will be published in the Federal Register.
8. The decision is effective on the date of service.

Decided: June 23, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Rena Laws-Byrum

Clearance Clerk

